

TITLE 15. BOARD OF PRISON TERMS

Text of Modified Regulations

The Board has illustrated changes to the original text in the following manner: regulation language originally proposed is underlined; deletions from the original language are shown in strikeout using a “—”; additions to the language originally proposed are double-underlined and deletions to the language originally proposed are shown in double-strikeout using a “~~---~~”. Please note that section 2646(c)(3) has been amended (without notation) to conform to a change without regulatory effect which was approved by the Office of Administrative Law on 6/28/01.

2646. Disposition.

The hearing panel shall make ~~any~~ a disposition appropriate to the facts of the case including consideration of public safety. Parole involves conditional liberty and a parolee who engages in violation of the condition(s) of parole may not be capable of successful reintegration into society and may compromise public safety. Nothing in this section shall prevent the ~~B~~board from imposing any of the following disposition alternatives when the ~~B~~board or the department seek criminal prosecution for conduct constituting a violation of the law. Disposition alternatives include the following:

(a) No Violation Found. If the hearing panel finds that the parolee did not commit the violation charged, the parolee shall be continued on parole. If the board at the central office calendar had extended the parole period pending the revocation hearing, the panel shall discharge the parolee effective the date of the hearing.

(b) Charge Dismissed. The charge may be dismissed if there is insufficient information to determine whether the charge is true, if the charge will not significantly affect the disposition, or if the interest of justice would be served.

If all the charges are dismissed in the case of a parolee whose parole period had been extended pending the revocation hearing the panel shall discharge the parolee effective the date of the hearing.

(c) Violation Found. If the hearing panel determines that the parolee committed the violation charged, the hearing panel shall make the appropriate decision necessary to handle the violation. Examples of disposition are:

(1) Continue on Parole. This disposition shall be used when the violation is not sufficiently serious to warrant reimprisonment. The decision to continue on parole may be accompanied by a decision to modify, add, or delete special conditions of parole. This decision cannot be used in the case of a parolee whose parole period had been extended pending the revocation hearing.

(2) Local Program. This disposition shall be used when the violation is not sufficiently serious to warrant reimprisonment but does indicate a need for treatment available in a community facility or program. This decision cannot be used in the case of a parolee whose parole period had been extended pending the revocation hearing.

(3) Return to Custody. This disposition shall be used when the violation is so serious that reincarceration is necessary or when the violation is the failure to register in a timely manner as provided in Penal Code Section 290(~~g~~) or the failure to provide samples of blood and saliva pursuant to Penal Code section 3060.5, as provided in Penal Code sections 295 through 300.3. Any time in custody under a parole hold will be directed to the revocation confinement period.

(4) Return to Custody: Eligible for Work Furlough. This disposition shall be used in the following circumstances:

(A) The violation is so serious that reincarceration is necessary; and

(B) The parolee will be retained in a local facility which will permit parolee participation in work furlough; and

(C) The panel finds that the parolee may be permitted to participate in work furlough.

(5) Refix Discharge Date. If the board at the central office calendar had vacated the parolee's early discharge date the hearing panel shall set the period of parole at the statutory maximum.

(6) Discharge. If the board at the central office calendar had extended the period of parole pending the revocation hearing and the panel determines the violation does not warrant reimprisonment ~~or indicates a need for local treatment only~~, the panel shall discharge the parolee effective the date of the hearing.

(d) Return to Custody: Psychiatric Treatment. This disposition shall be used when the sole finding of the panel is that the parolee ~~suffers from a mental disorder which substantially impairs the parolee's ability to maintain himself or herself in the community, or which makes the parolee a danger to himself/herself or others, and necessary treatment cannot be obtained in the community~~ has engaged in conduct indicating that his mental condition has deteriorated such that the parolee is likely to engage in future criminal behavior. This disposition shall only be used when the mental condition substantially impairs the parolee's ability to maintain himself or herself in the community and necessary treatment cannot be obtained in the community.

NOTE: Authority cited: Sections 3052 and 5076.2, Penal Code. Reference: Sections 290, 295 through 300.3, 3000, 3053, 3056, 3057, 3060, and 3060.5, Penal Code.

HISTORY

1. Amendment of subsection (c)(5) filed 10-27-77 as an emergency; effective upon filing. Certificate of Compliance included (Register 77, No. 44).

2. Amendment of subsection (c)(5) and new subsection (c)(6) filed 4-4-78; effective thirtieth day thereafter (Register 78, No. 14).

3. Amendment of subsections (a), (b), (c)(1), (c)(2), (c)(3), (c)(4) and new subsection (c)(7) filed 1-25-79; effective thirtieth day thereafter (Register 79, No. 4).

4. Editorial correction (Register 79, No. 14).

5. Amendment of subsection (c)(5) filed 12-28-79 as an emergency; designated effective 1-1-80 (Register 79, No. 52). A Certificate of Compliance must be filed within 120 days or emergency language will be repealed on 5-1-80.

6. Certificate of Compliance filed 5-1-80 (Register 80, No. 18).

7. Amendment of subsection (c)(4) filed 5-1-80; effective thirtieth day thereafter (Register 80, No. 18).

8. Renumbering of subsections (c)(6) and (c)(7) to subsections (c)(7) and (c)(8) and new subsection (c)(6) filed 5-28-81; effective thirtieth day thereafter (Register 81, No. 22).

9. Repealer of subsection (c)(3) and amendment of subsection (c)(5) filed 11-13-85; effective thirtieth day thereafter (Register 85, No. 46).

10. Amendment of subsection (c) and new subsection (d), filed 10-5-89; operative 11-4-89 (Register 89, No. 41).

11. Amendment of first paragraph and subsection (b) filed 9-23-96; operative 10-23-96 (Register 96, No. 39).

2646.1. Violations and Length of Confinement

The following are parole revocation assessment guidelines when good cause has been found on a single parole violation charge. The ranges represent the suggested period of confinement when a return to custody is imposed as a disposition for a violation of parole. The ranges are suggested for a parolee with no prior returns to custody. The assessment may be consecutive to or concurrent with other charges as long as the total period of confinement does not exceed the revocation period specified at § 2635.1. The hearing panel may impose a period of confinement that is outside the assessment range if justified by the particular facts of the individual case and if the facts supporting the term are stated on the record. This section is declaratory of existing Board policy and is not intended to modify the authority of an individual hearing panel or the interests of a prisoner subject to a parole revocation.

Type I Violations	
Assessment Range	
(0 to 4 months)	
(a) <u>Technical Violations of Parole</u>	
(1) <u>Use of alcohol</u>	
(2) <u>Failure to participate in testing for the presence of alcohol or any controlled substance, including marijuana</u>	
(3) <u>Instructions: Changing employment without informing P&CSD</u>	
(4) <u>Failure to inform P&CSD of criminal arrests</u>	
(5) <u>Instructions: Leaving county of residence beyond 48 hours without P&CSD approval</u>	
(6) <u>Instructions: Traveling beyond 50 miles from residence without P&CSD approval</u>	
(7) <u>Failure to follow other instructions from P&CSD</u>	
(0 to 4 months)	
(b) <u>Controlled Substance Violations</u>	
(1) <u>Use of a controlled substance, including marijuana</u>	
(2) <u>Possession of marijuana (1oz. or less)</u>	
(3) <u>Under the influence of controlled substance, including marijuana</u>	
(4) <u>Possession of controlled substance paraphernalia</u>	
(5) <u>Presence in a place where a controlled substance is used, sold or given away</u>	
Type II Violations	
Assessment Range	
(5 to 9 months)	
(a) (c) <u>Technical Violations of Parole</u>	
(1) <u>Failure to attend Parole Outpatient Clinic</u>	
(2) <u>Violations of other special conditions of parole</u>	
(3) <u>Failure to report to P&CSD</u>	
(4) <u>Absconding parole supervision</u>	
(5) <u>Instructions: Changing residence without informing P&CSD</u>	
(6) <u>Unauthorized possession of a knife with a blade exceeding two inches</u>	
(7) <u>Access to a firearm</u>	
(8) <u>Access to a deadly weapon</u>	
(9) <u>Access to a simulated firearm</u>	
(10) <u>Access to a stun gun or taser</u>	
(11) <u>Access to a tear gas dispenser</u>	
(12) <u>Access to a knife with a blade exceeding two inches</u>	
(13) <u>Access to a crossbow</u>	
(14) <u>Possession of ammunition</u>	
(15) <u>Access to ammunition for a firearm</u>	
(5 to 9 months)	
(b) (d) <u>Sex Offenses</u>	
(1) <u>Consensual participation in oral copulation in a jail or prison</u>	
(2) <u>Consensual participation in sodomy in a jail or prison</u>	
(3) <u>Indecent exposure</u>	
(4) <u>Pimping or pandering</u>	
(5) <u>Prostitution</u>	

- (6) Failure to register pursuant to Penal Code section 290
- (7) Any other sex offense involving an adult victim where the offense is not accomplished against the victim's will

(5 to 9 months)

~~(e)~~ (e) Assault and Battery

- (1) Assault
- (2) Battery without injury

(5 to 9 months)

~~(d)~~ (f) Property Offenses

- (1) Possession of burglary tools
- (2) Tampering with an automobile
- (3) Making, drawing, or delivering a check, draft or order with insufficient funds
- (4) Operating a motor vehicle without owner's permission
- (5) Petty theft
- (6) Petty theft with a prior conviction or judicial/administrative adjudication
- (7) Receiving or possession of stolen property
- (8) Misappropriation of public money (less than \$400)

(5 to 9 months)

~~(e)~~ (g) Controlled Substance Violations

- (1) Possession of a controlled substance
- (2) Possession of marijuana (over 1 oz.)
- (3) Sale of substance in lieu of a controlled substance, including marijuana
- (4) Forgery of a prescription

(5 to 9 months)

~~(f)~~ (h) Driving Violations

- (1) First offense driving under influence of alcohol/drugs
- (2) Reckless driving with no personal injury
- (3) Hit and run causing property damage
- (4) Driving with revoked or suspended license
- (5) Any other misdemeanor driving violation not listed in this section

(5 to 9 months)

~~(g)~~ (i) Miscellaneous Crimes Against Others and Property

- (1) Threats or harassment not constituting terrorist threats
- (2) Contributing to the delinquency of a minor
- (3) Destroying public property
- (4) Resisting arrest with no prior convictions or judicial/administrative adjudications
- (5) Trespassing
- (6) Vandalism or malicious mischief
- (7) Refusal to sign parole conditions (maximum 6 months per Penal Code section 3060.5)
- (8) Illegal entry into the United States

(5 to 9 months)

~~(h)~~ (j) Miscellaneous Violations of Law

- (1) Disturbing the peace
- (2) Drunk in public
- (3) Failure to register pursuant to Health and Safety Code 11590
- (4) Providing false identification to a peace officer
- (5) Failure to participate in or complete a batterer's program
- (6) Incitement to riot
- (7) Destroy or damage a prison or jail in the amount of \$400 or less
- (8) Any other felony that does not involve the use of force or violence or possession of a weapon
- (9) Any other misdemeanor not listed in this section
- (10) Any conspiracy to commit a Type II violation
- (11) Any attempt to commit a Type II violation
- (12) Any solicitation to commit a Type II violation

(13) Accessory to a Type II violation

<u>Type III Violations</u>	
<u>Assessment Range</u>	
<u>(10 to 12 months)</u>	
<u>(a) (k) <i>Technical Violations of Parole</i></u>	
(1) <u>Association with persons prohibited by the board or P&CSD</u>	
(2) <u>Being present in prohibited areas without permission</u>	
(3) <u>Any violation of a condition involving gang participation or association</u>	
<u>(10 to 12 months)</u>	
<u>(b) (l) <i>Homicide</i></u>	
(1) <u>Murder</u>	
(2) <u>Voluntary manslaughter</u>	
(3) <u>Involuntary manslaughter</u>	
<u>(10 to 12 months)</u>	
<u>(c) (m) <i>Robbery</i></u>	
(1) <u>All armed robberies</u>	
(2) <u>All unarmed robberies</u>	
(2) <u>Grand theft</u>	
(3) <u>Carjacking</u>	
<u>(10 to 12 months)</u>	
<u>(d) (n) <i>Sexual Offenses - Major</i></u>	
(1) <u>Rape</u>	
(2) <u>Unlawful sexual intercourse or statutory rape</u>	
(3) <u>Assault with intent to commit rape, sodomy, oral copulation, or mayhem</u>	
(4) <u>Lewd and lascivious acts with a child under 14 years</u>	
(5) <u>Oral copulation with a minor or an adult victim where the offense was accomplished against the adult victim's will</u>	
(6) <u>Sodomy with a minor or an adult victim where the offense was accomplished against the adult victim's will</u>	
(7) <u>Incest</u>	
(8) <u>Annoying children in violation of Penal Code section 647.6</u>	
(9) <u>Loitering around or within schools or playgrounds</u>	
(10) <u>Penetration of the genital or anal openings by foreign object of a minor or an adult victim where the offense was accomplished against the adult victim's will</u>	
(11) <u>Sexual battery</u>	
(12) <u>Indecent exposure with a prior conviction or judicial/administrative adjudication</u>	
(13) <u>Any other sexual offense involving minors not listed in this section</u>	
(14) <u>Any other sexual offense against adult victims where the offense was accomplished against the victim's will not listed in this section</u>	
<u>(10 to 12 months)</u>	
<u>(e) (o) <i>Assault and Battery - Major</i></u>	
(1) <u>Assault with a deadly weapon</u>	
(2) <u>Assault with a deadly weapon upon a peace officer</u>	
(3) <u>Assault with a caustic substance</u>	
(4) <u>Assault with the intent to commit murder</u>	
(5) <u>Assault with force likely to produce great bodily injury</u>	
(6) <u>Assault on a spouse or child</u>	
(7) <u>Administration of poison</u>	
(8) <u>Mayhem</u>	
(9) <u>Battery upon a peace officer</u>	
(10) <u>Battery upon a spouse or child</u>	
(11) <u>Cruelty to a child</u>	
(12) <u>Any other crime where bodily injury is inflicted not listed in this section</u>	
(13) <u>Any other crime posing a major personal risk to the safety of others not listed in this section</u>	
(14) <u>Drive-by shooting</u>	
(15) <u>Threats to a Commissioner or Deputy Commissioner or their families</u>	

(10 to 12 months)

(f) (p) Property Offenses – Major

- (1) First degree burglary
- (2) Second degree burglary
- (3) Credit card theft or illegal use of a credit card
- (4) Possession of counterfeit dies or plates
- (5) Embezzlement
- (6) Forgery
- (7) Fraud
- (8) Grand theft
- (9) Grand theft automobile
- (10) Extortion
- (11) Misappropriation of public moneys (more than \$400)

(10 to 12 months)

(g) (q) Alcohol and Controlled Substance Violations – Major

- (1) Sale or furnish a controlled substance, including marijuana, to a minor
- (2) Sale of a controlled substance, including marijuana
- (3) Possession of a controlled substance, including marijuana, for sale
- (4) Manufacture of a controlled substance
- (5) Bringing a controlled substance, including marijuana, into a jail or prison
- (6) Use of a controlled substance, including marijuana, in a jail or prison
- (7) Possession of a controlled substance, including marijuana, in a jail or prison
- (8) Bringing alcohol into a jail or prison
- (9) Use of alcohol in a jail or prison
- (10) Possession of alcohol in a jail or prison

(10 to 12 months)

(h) (r) Weapons Offenses

- (1) Manufacture/sale of a deadly weapon (other than a firearm)
- (2) Possession of a deadly weapon
- (3) Use of a deadly weapon
- (4) Use of a deadly weapon in the commission of a crime
- (5) Possession of a firearm
- (6) Possession of a simulated firearm
- (7) Use of a firearm
- (8) Bringing a deadly weapon or firearm into a jail or prison
- (9) Possession or manufacture of a deadly weapon or explosive device in a jail or prison
- (10) Possession of a concealable firearm
- (11) Possession of any firearm with prior firearm conviction
- (12) Possession of non-concealable firearm without prior use conviction
- (13) Armed with a firearm in the commission of a felony
- (14) Possession of a crossbow
- (15) Possession of a stun gun or taser
- (16) Possession of a tear gas gun or dispenser
- (17) Use of a stun gun or taser
- (18) Use of tear gas gun or dispenser
- (19) Brandish a weapon (other than a firearm)
- (20) Brandish a firearm
- (21) Other offenses involving the use/possession of a firearm or deadly weapon
- (22) Other weapons violations

(10 to 12 months)

(i) (s) Driving Violations - Major

- (1) Driving under the influence of alcohol/drugs with a prior conviction or judicial/administrative adjudication
- (2) Reckless driving in willful or wanton disregard for the safety of others
- (3) Driving under the influence of alcohol/drugs causing injury
- (4) Vehicular manslaughter
- (5) Any other felony driving violations not listed in this section

(10 to 12 months)

(i) (t) Miscellaneous Major Crimes

- (1) Child stealing
- (2) False imprisonment
- (3) Hostage taking
- (4) Kidnapping
- (5) Arson of inhabited dwelling
- (6) Arson of other structure or forest land
- (7) Escape from a jail or prison without force
- (8) Escape from a jail or prison with force
- (9) Destroy or injure a jail or prison (more than \$400)
- (10) Possession of caustic chemicals with intent to harm others
- (11) Terrorist threats
- (12) Stalking
- (13) Commission of a serious felony as defined at Penal Code section 1192.7
- (14) Commission of a violent felony as defined at Penal Code section 667.5
- (15) Conspiracy to commit a Type III violation
- (16) Attempt to commit a Type III violation
- (17) Solicit another to commit a Type III violation
- (18) Accessory to a Type III violation

(0 to 12 months)

(k) (u) Psychiatric Treatment

- (1) Exhibits conduct indicating that the parolee's mental condition has deteriorated such that the parolee is likely to engage in criminal behavior

NOTE: Authority cited: Sections 3040, 3041, 3052, 5076.2 and 5077 Penal Code. Reference: Sections 3056, 3060, 3060.5 and 3057, Penal Code.